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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

TROY WAYNE ROLAND,

Defendant and Appellant.

F075103

(Super. Ct. No. 13877)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Mariposa County. Michael A. Fagalde, Judge.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Michael Dolida, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Poochigian, Acting P.J., Meehan, J. and Snauffer, J.

## **INTRODUCTION**

After a jury convicted appellant Troy Wayne Roland of unlawfully taking or driving a motor vehicle (Veh. Code, § 10851, subd. (a)), he moved for a new trial based on a new alibi statement by his wife. Prior to sentencing, the trial court denied appellant's motion for a new trial based on newly discovered evidence pursuant to Penal Code section 1181, subdivision (8).<sup>1</sup> On appeal, appellant contends the trial court abused its discretion in denying his motion for a new trial. We conclude the trial court did not abuse its discretion in ruling the new alibi statement was so lacking in credibility there was no reasonable probability its admission would result in a different outcome on retrial, and affirm.

## **FACTUAL BACKGROUND**

### **I. The Underlying Trial**

Paul Moore resided in a trailer home in Midpines, and possessed a 1992 Ford Explorer he co-owned with his ex-wife, Viola Louise Tucker-Moore. In May 2016, Moore allowed appellant and Janice Roland (Roland), appellant's wife, to temporarily live with him in the trailer because they were otherwise homeless.

Around 9:00 a.m. on the morning of May 11, 2016, Probation Officer Monique Beaudoin and Mariposa County Sheriff's Deputy Aron Akbiyikian traveled to the trailer to contact Moore. Beaudoin was assigned to supervise Moore on his postrelease community supervision (PRCS) following his conviction for failure to register as a sex offender. Beaudoin elected to contact Moore because he recently tested positive for methamphetamine and marijuana and failed to report for a meeting with her.

When Beaudoin and Akbiyikian arrived, Moore, appellant, and Roland were inside the trailer, and Moore's car was parked outside. Beaudoin and Akbiyikian

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

contacted Moore at the front door of the trailer and immediately detained him. After performing a probation search, Beaudoin and Akbiyikian told Moore they were taking him into custody for violating the terms of his PRCS. They also told appellant and Roland they could not stay in the trailer because they are both convicted felons and, as a condition of his PRCS, Moore is not allowed to associate with known felons. Appellant and Roland then took a moment to gather their belongings and all parties exited the trailer. Neither Moore, Beaudoin, nor Akbiyikian recalled seeing appellant or Roland touch Moore's keys, which were hanging on the wall near the trailer's front door.

Once outside, Moore asked Beaudoin to retrieve his keys and to secure the trailer. Beaudoin returned to the trailer, located the keys, used them to lock both doors to the trailer, and then placed the keys in Moore's property that would be transported to the jail. Meanwhile, Akbiyikian gave appellant and Roland cash for bus fare, so they could walk to the nearby bus stop and travel to Mariposa. As they were leaving, Beaudoin and Akbiyikian observed appellant and Roland slowly walking away from the trailer.

After arriving at the jail, Moore contacted Tucker-Moore, who came to the jail to obtain Moore's keys, so she could move the car to a safe place while he was in jail. Once she obtained the keys from the jail, she noticed the car key was not on the key ring. She then traveled to Moore's trailer and discovered the car was gone. Moore and Tucker-Moore both testified they did not give anyone permission to drive the car, and the car remains missing.

Earlier that day, Moore's neighbor and landlord, Patricia Houtz, watched from her residence as Beaudoin escorted Moore out of his trailer and into custody. Approximately 15 to 20 minutes later she stepped outside and saw a male and female approach Moore's car. In court she identified the male as appellant, and testified she recognized both appellant and the female because they had been staying in Moore's trailer for several days. As appellant approached Moore's car, Houtz asked him what happened to Moore, and he replied he believed Moore was going to jail for about 15 days. Houtz asked

appellant if he was going to see Moore, but Houtz could not hear his response. Appellant entered the car and sat in the driver's seat, and the female sat in the front passenger's seat. Houtz then watched as appellant made a twisting motion with his right arm consistent with turning the ignition, started the car, and drove away.

The next day, California Highway Patrol Officer Dawn Hoff met with Houtz at her residence and showed her two different photographic lineups, one containing a photograph of appellant, and the other containing a photograph of Roland. After viewing the lineup containing appellant, Houtz tentatively identified appellant as the person she saw drive the car but stated she could not be sure. At trial she clarified she had a difficult time recognizing appellant in the lineup because the photos were poor quality and because his physical appearance had changed. Houtz was unable to identify Roland in the other lineup and testified she had seen her fewer times than appellant and was less familiar with her appearance.

## **II. Motion for a New Trial**

After the jury convicted appellant of auto theft, he filed a motion for a new trial based on a statement made by Roland several weeks after the trial. Appellant's counsel included a declaration in the motion chronicling his inability to locate Roland prior to trial despite several hours spent searching in various homeless encampments and places Roland was known to stay. Appellant's counsel ultimately located Roland after she was incarcerated for a probation violation. A defense investigator then met with Roland in the county jail, memorialized her statement in writing, and Roland signed the statement "under penalty of perjury."

In the statement, Roland's description of the morning Moore was arrested by Beaudoin and Akbiyikian is mostly consistent with the testimony of other witnesses. However, she claims neither she nor appellant took Moore's car. Instead, she describes leaving the area near the trailer without the car as follows:

“Roland stated her and [appellant] left the area towards Highway 49 where she believes they hitched a ride. Roland stated that she and [appellant] have used the [Yosemite Area Regional Transportation System] bus twice from Moore’s trailer; however, it is unclear to Roland whether they used the bus on day [sic] in question. Roland recalls [appellant] having one (1) crutch with him as they walked towards the highway. After they were back in Mariposa, Roland believes [appellant] may have obtained a ride to the hospital .... She continued to state that she believes after [appellant] left hospital he was dropped off somewhere near Rite-Aid in Mariposa.”

Appellant also included in the motion an affidavit from one of appellant’s jurors. The juror stated that after the trial, seven of the 12 jurors had “reservations about [appellant’s] guilt or innocence,” and she wondered why Roland was not called as a witness. She further claimed after reviewing Roland’s statement, “[h]ad we as jurors had the testimony of [Janice] Roland to consider at the trial, I would have been inclined to maintain my doubts as to [appellant’s] guilt and my vote as a juror may well have been to vote not guilty.”

At the hearing on the motion, the trial court found appellant exercised reasonable diligence in attempting to locate Roland prior to trial, and that her statement constituted newly discovered evidence. However, the trial court denied the motion on two grounds. First, it concluded the only aspect of Roland’s statement that was inconsistent with other evidence at trial was her claim she did not see appellant take the car, and therefore her testimony would only serve to impeach Houtz’s credibility. Second, it found Roland’s statement lacked credibility, and described its conclusion as follows:

“I have grave concerns about the credibility of Ms. Roland, and that she’s the wife of [appellant] and most likely biased in his favor, and that she could have herself been charged with offenses related to this case, and that her statement was vague and general as to all other particulars surrounding the morning of May 11, 2016.”

The court went on to note Roland had not been subject to cross-examination, and would likely be subject to impeachment with her own criminal history. Based on both the lack

of materiality and credibility of the statement, the court concluded the admission of Roland's statement was unlikely to result in a different outcome on retrial.

## **DISCUSSION**

Appellant contends the trial court abused its discretion in denying his motion for a new trial. We disagree.

Section 1181, subdivision 8 provides that the trial court may grant a new trial motion "[w]hen new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial."

Applying this provision, our Supreme Court has held:

"In ruling on a motion for new trial based on newly discovered evidence, the trial court considers the following factors: '1. That the evidence, and not merely its materiality, be newly discovered; 2. That the evidence be not cumulative merely; 3. That it be such as to render a different result probable on a retrial of the cause; 4. That the party could not with reasonable diligence have discovered and produced it at the trial; and 5. That these facts be shown by the best evidence of which the case admits.'" ( *People v. Delgado* (1993) 5 Cal.4th 312, 328 (*Delgado*).)

Under this standard, a different result is probable on retrial if it is probable that at least one juror would have voted not guilty if the new evidence had been presented.

( *People v. Soojian* (2010) 190 Cal.App.4th 491, 521 (*Soojian*).) However, "[t]he determination of a motion for a new trial rests so completely within the court's discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears." ( *Delgado, supra*, 5 Cal.4th at p. 328; *People v. McDaniel* (1976) 16 Cal.3d 156, 179 ["A motion for a new trial on newly discovered evidence is looked upon with disfavor, and unless a clear abuse of discretion is shown, a denial of the motion will not be interfered with on appeal."]; *People v. Shoals* (1992) 8 Cal.App.4th 475, 488 ["[W]e justifiably accord considerable deference to the trial judge "because of 'his observation of the witnesses, [and] his superior opportunity to get "the feel of the case." [Citation]" ].)

In evaluating whether a different result is probable on retrial, “ ‘the trial court may consider the credibility as well as materiality of the evidence[.]’ ” (*Delgado, supra*, 5 Cal.4th at p. 329.) The materiality determination includes whether the newly discovered evidence “contradicts the strongest evidence introduced against the defendant” (*People v. Martinez* (1984) 36 Cal.3d 816, 823) and whether it is cumulative or merely serves to impeach the credibility of a prosecution witness. (*People v. Hall* (2010) 187 Cal.App.4th 282, 299). The credibility determination includes several relevant factors, such as the bias or motive of the witness, specificity of the proffered testimony, and conflicts with other evidence. (*People v. Beeler* (1995) 9 Cal.4th 953, 1004; *People v. Howard* (2010) 51 Cal.4th 15, 43-44; *People v. Shoals, supra*, 8 Cal.App.4th at pp. 488-489.)

The trial court based the denial of the motion on its conclusion that Roland’s statement would only serve to impeach a prosecution witness, and because it lacked credibility. We disagree the statement is only relevant for impeachment, because if the statement is believed, it establishes an alibi. Although Roland’s statement neither she nor appellant took Moore’s car directly contradicts Houtz’s testimony, it is also affirmative evidence appellant did not take the car and was not present when it was stolen.

However, we find the trial court’s conclusion that Roland’s statement lacked credibility was a reasonable basis to deny the motion. First, the court noted Roland was likely to be biased in favor of appellant based on their marital relationship. The court also recognized Roland had a strong motive to lie based on her potential criminal liability, because Houtz’s testimony established Roland is potentially liable for receiving stolen property or as an aider and abettor to appellant’s auto theft. Second, the court accurately described the statement as vague and lacking specificity. Roland denies that either she or appellant took Moore’s car, but she could not describe with specificity how they left the area or where they went. Finally, the court reasoned Roland would be

impeached with her criminal history and thoroughly cross-examined, which would highlight the deficiencies in her alibi statement.

Considering the potential weight of Roland's statement against the evidence presented at trial, the trial court did not abuse its discretion in concluding it was unlikely to produce a different outcome. Houtz's testimony directly contradicts Roland's statement, but it was specific, detailed, and made without any apparent bias or motive to lie. Moreover, appellant and Roland are the only individuals who had access to the area where Moore's keys were stored prior to the keys and car being taken. Credible direct and circumstantial evidence points to guilt, and the trial court's conclusion that Roland's statement would be insufficient to overcome this evidence was reasonable.

Appellant claims the juror affidavit demonstrates a different result is probable on retrial and relies on his characterization of this court's analysis in *Soojian, supra*, 190 Cal.App.4th 491. There, we held the trial court erred in denying the defendant's motion for a new trial based on an array of new evidence, including statements from several lay and expert witnesses. While we noted in the opinion the defendant submitted two affidavits from jurors who claimed they would not have voted guilty if they had been presented with the new evidence, we did not discuss these affidavits in our analysis. Rather, our conclusion was based on the weight of the new evidence and our independent conclusion that "the new evidence create[d] a reasonable possibility that he will obtain a different result at retrial, i.e., at least one juror will find Soojian not guilty." (*Id.* at p. 524.)

Here, we find the juror affidavit submitted by appellant of limited significance. Roland's statement was not subject to cross-examination, was not written in Roland's own words, and was not considered by the juror until weeks after the end of the trial. As the trial court noted, the affidavit shows the juror "failed to consider that Ms. Roland would have been vigorously cross-examined and may have likely been subjected to impeachment based on her own criminal history and on her potential wrongful conduct."



The standard of review for a motion for a new trial vests the trial court with considerable discretion. Given the factual scenario presented, we cannot say the trial court's denial of the motion was an abuse of discretion, let alone "manifest and unmistakable." (*Delgado, supra*, 5 Cal.4th at p. 328.) Instead, we find the ruling was reasonable, based on appropriate considerations, and supported by the evidence.

#### **DISPOSITION**

The order denying the motion for a new trial is affirmed.